



Attorney General

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Phoenix, Arizona 85007

Robert R. Corbin

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ARIZONA ATTORNEY GENERAL

May 14, 1985

Mr. Arthur T. Markham
Deputy County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

RE: I85-067 (R85-038)

Dear Mr. Markham:

We have reviewed the opinions expressed in your letter to Mr. John Tavasci, Principal of the Clarkdale-Jerome School District No. 3, pertaining to whether an employee or board member of a school district may bid on property being sold by the district.

We concur with your conclusion that an employee or school board member may bid on school property. However, we would add the following to your analysis.

A school board member is a public officer^{1/} within the meaning of Arizona's conflict of interest statutes. School

1. A.R.S. § 38-502.8 defines a "public officer" as "all elected and appointed officers of a public agency established by charter, ordinance, resolution, state constitution or statute, but excluding members of the legislature."

district employees are employees^{2/} within the meaning of the same statutes because school districts are political subdivisions of the state. See A.R.S. § 15-923; Amphitheater Unified School District No. 10 v. Harte, 128 Ariz. 233, 624 P.2d 1281 (1981). The conflict of interest statute, A.R.S. § 38-503, provides:

- A. Any public officer or employee of a public agency who has, or whose relative has, a substantial interest^{3/} in any contract, sale, purchase or service to such public agency shall make known that interest in the official records of such public agency and shall refrain from voting upon or otherwise participating in any manner as an officer or employee in such contract, sale or purchase.
- B. Any public officer or employee who has, or whose relative has, a substantial interest in any decision of a public agency shall make known such interest in the official records of such public agency and shall refrain from participating in any manner as an officer or employee in such decision.

A school board member or employee who submits a bid on property being sold by the district would have a substantial interest in the transaction. A school board member in such a position would have to file a disclosure statement as to this

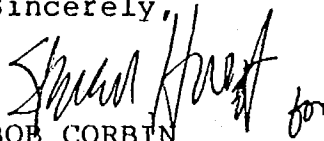
2. A.R.S. § 38-502.2 defines "employee" as "all persons who are not public officers who are employed on a full, part-time or contract basis by an incorporated city or town, a political subdivision or the state or any of its departments, commissions, agencies, bodies or boards for remuneration."

3. A.R.S. § 38-502.11 defines a substantial interest as any "pecuniary or proprietary interest, either direct or indirect, other than a remote interest." Also see Ariz. Atty. Gen. Ops. 178-265 and 182-004.

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interest. Furthermore, the school board member may not vote to approve the sale or participate in any manner in the decision to sell the property. Employees of the district submitting bids on school property for sale have a similar obligation to declare for the public record their interest in the property sale. Employees also would be prohibited from participating in any manner in the decision to sell the property.

Sincerely,


BOB CORBIN
Attorney General

BC:TLM:seb

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Rec'd 2-28-85

February 26, 1985

Mr. John Tavaschi, Principal
Clarkdale-Jerome School Dist. #3
P. O. Box 248
Clarkdale, AZ 86324

R85- 038
EDUCATION OPINION

ISSUE NO LATER THAN

4-26-85

Dear Mr. Tavaschi:

This letter is in response to your recent inquiry for an opinion as to whether or not it is legal for an employee or board member of a school district to offer a bid on property being sold by the district in which they are employed, or whom they represent.

In my opinion, it is legal for such an employee or board member to bid on school property. An extra bidder for property can help insure that the property is sold for full, fair market value. Indeed, if the property sold for less than fair market value, a gift might possibly be inferred.

However, caution must be employed to insure that the sale is fully advertised and promoted to make certain full public notice and involvement in the sale is attained.

Of course, a board member cannot take place in the vote approving the sale of the school property to such a board member. Nor, should the board member be counted to see if a quorum is present.

The district board should also maintain the right to refuse the bid offered by either a board member or employee. Care must be taken that the school employee or board member have no "inside" information that would give such a bidder unfair advantage. The school property should be fully described and open for public inspection before the sale.

OFFICE OF THE YAVAPAI COUNTY ATTORNEY
Tavasci Letter Continued
Page Two (2)
February 26, 1985

A copy of this letter is being forwarded to the
Attorney General for their review.

Please let me know if I can help you further.

Very truly yours,



Arthur T. Markham
Deputy County Attorney

ATM:ces
cc: Attorney General

OFFICE OF THE YAVAPAI COUNTY ATTORNEY
Tavasci Letter Continued
Page Two (2)
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